



Australian Government

Department of Health

Mr Tom Lyle
Senior Analyst, Competition Exemptions
Australian Competition and Consumer Commission
Level 2, 23 Marcus Clarke Street
CANBERRA ACT 2601

Dear Mr Lyle

National Pharmaceutical Services Association (NPSA) – AA1000571 – Re-Authorisation

Thank you for the opportunity to comment on the application for re-authorisation to the Australian Competition and Consumer Commission (ACCC) in respect of the application lodged by the NPSA (Re-Authorisation AA1000571).

The Department of Health (Health) supports the range of activities that form the Proposed Conduct defined in application for re-authorisation, and concurs that the Proposed Conduct will support the desired outcomes of facilitating supply of, and access to, Medicines and Pharmacy Products. Health also supports the inclusion of the proposed reporting condition and permitting the Proposed Conduct only as necessary for the purposes of addressing shortages in supply that may arise from the COVID-19 pandemic.

Health provides the following feedback for consideration by the ACCC as part of re-authorising the Determination.

Authorised duration of proposed conduct

Health notes that the Existing Authorisation (AA1000480) was granted on 17 September 2020 and is due to expire on 30 September 2021. The NPSA requested an urgent interim authorisation, which was granted by the ACCC, that will continue until the re-authorisation decision comes into effect (if granted).

Health also notes that the application by the NPSA for re-authorisation to engage in the Proposed Conduct is for a 12-month period, from the date of ACCC Final Determination.

Scope of the Proposed Conduct

Health notes that the applicants are seeking to engage in substantially the same conduct (on substantially the same conditions) that the ACCC authorised previously.

Health also notes that the current definition of Pharmacy Products in the proposed application at Section 2.2 is: *“all other goods available for sale at community pharmacies*

(including, but not limited to products such as personal protective equipment, face masks, gloves, hand sanitisers and toilet paper)".

In its current form, this definition would appear to cover household goods generally available in other retail environments (such as toilet paper and discretionary food items) and other discretionary consumer goods (such as perfumes and cosmetics) sold at community pharmacies. It is unclear how activities relating to the coordinated acquisition, inventory management and logistical arrangements for such household and discretionary goods are directly relevant to supporting a health-related response to the COVID-19 pandemic.

On this basis, Health recommends the ACCC give further consideration to whether the definition of Pharmacy Products should be narrowed in scope given the broad nature of the current definition, and encourages further consultation with the NPSA and interested parties on the scope of this definition prior to issuance of the final Determination. Definitions used in the Therapeutic Goods Act 1989, the Industrial Chemicals Act 2019 and related legislative instruments may be relevant for informing consultation and refinement of definitions.

Alternatively, should amendments to the definition of Pharmacy Products not be possible due to practical difficulties in narrowing the scope of the definition, Health encourages the ACCC to give additional consideration to how the reporting condition (and any associated monitoring arrangements) may best be utilised during the authorisation period to ensure that the Proposed Conduct is being applied to only address relevant shortages due to the COVID-19 pandemic.

Other matters

Health notes, as it did previously, that while a significant volume of Medicines and Pharmacy Products are supplied through appointed Community Service Obligation (CSO) Distributors (some of whom are NPSA members), there are a number of other non-CSO pharmaceutical wholesalers and distributors which supply essential Medicines and Pharmacy Products.

Health welcomes the opportunity for current, future, and non-NPSA member to participate under the Authorisation if they choose.

Should the ACCC wish to discuss the feedback provided in this letter, please contact myself in the first instance at [REDACTED]. Alternatively, you may contact Jerome Boland, A/g Director of the CSO Services and Supply Section, at [REDACTED].

Yours sincerely

[REDACTED]

David Laffan
Assistant Secretary
Pharmacy Branch
5 October 2021